



# FAIRFAX COUNTY STAFF REPORT

V I R G I N I A

## PROPOSED ZONING ORDINANCE AMENDMENT

Portable Signs

### PUBLIC HEARING DATES

**Planning Commission**

June 19, 2003 at 8:15 p.m.

**Board of Supervisors**

July 7, 2003 at 4:00 p.m.

**PREPARED BY  
ZONING ADMINISTRATION DIVISION  
DEPARTMENT OF PLANNING AND ZONING  
(703) 324-1314**

May 19, 2003

**DMK**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.  
For additional information call (703) 324-1334.

## STAFF COMMENT

The proposed amendment is included on the Priority 1 list of the 2003 Zoning Ordinance Work Program which was endorsed by the Board of Supervisors in March, 2003. The main purpose of the amendment is to clarify the definition of portable sign as it pertains to advertising on vehicles.

Currently, a sign is defined in the Zoning Ordinance as any writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant or any other device, figure or similar character which (1) is used to announce, direct attention to, identify, advertise or otherwise make anything known; and (2) is visible from the public right-of-way or from adjoining property. The definition also includes definitions for three types of signs which are building-mounted, freestanding and portable. A portable sign is currently defined as "[a]ny sign not permanently affixed to the ground nor to a building, including any sign attached to or displayed on a vehicle that is used for the expressed purpose of advertising a business establishment, product, service, or entertainment, when that vehicle is so parked as to attract the attention of the motoring or pedestrian traffic". Par. 2 of Sect. 12-104 of the Zoning Ordinance prohibits all portable signs except for signs permitted under Sect. 12-103 of the Zoning Ordinance, which does not include signs on vehicles.

The portable sign definition, as it applies to advertising on vehicles, was the subject of an appeal of a Notice of Violation to the Board of Zoning Appeals (BZA) in 1998. This appeal involved a trailer parked on a shopping center parking lot in a parking space located adjacent to the public right-of-way and near the entrance to the shopping center. Painted lettering on the trailer advertised a business located in the shopping center and this business was not visible from the street or located near the sign. The trailer was occasionally used for catering, but mostly remained parked at the same location and used for storage. The Zoning Administrator determined that the trailer was predominantly used for advertising, based on the criteria of 1) whether the vehicle ever moved; 2) whether there were alternative locations available to park the vehicle and 3) whether the vehicle was ever used for purposes unrelated to advertising. Even though the appellant admitted that the purpose of the sign on the trailer was for advertising, the BZA reversed the Zoning Administrator's decision and expressed concern that the definition of a portable sign was vague and that its enforcement was arbitrary. The BZA decision was appealed by the Board of Supervisors and Zoning Administrator to the Circuit Court and overturned by the Circuit Court. Although the decision of the Zoning Administrator was ultimately upheld by the Circuit Court, it was noted in the judge's opinion that the concept that a vehicle with a sign is a prohibited portable sign if it is predominantly used for advertising and the criteria to make that determination were not set forth in the portable sign definition. This appeal raised the question whether the portable sign definition should be revised as it pertains to advertising on vehicles.

The existing provisions of the portable sign definition regarding a vehicle that is used for the expressed purpose of advertising when the vehicle is so parked as to attract the attention of the motoring or pedestrian traffic is difficult language to administer and enforce. Obviously, many businesses have vehicles that identify the name of the business that are also parked on their lot. The current definition of portable sign, in effect, prompts a determination to be made as to whether the location of a parked vehicle is for the expressed purpose of attracting the attention of the motoring or

pedestrian traffic. A vehicle with a banner draped on it advertising the name of a business or containing a sign with arrows or directions to a specific business establishment on the property where the vehicle is parked would seem to clearly be for the expressed purpose of providing advertising and thus a portable sign. A delivery vehicle containing the name of the business establishment which is used every day in the business but is parked in front of the business every night, near the street, on a small site with limited parking might not be considered to be located primarily for advertising purposes and thus a portable sign, given the limited on site parking and the fact that the vehicle does not remain stationary on the site for days or weeks at a time. However, this same vehicle which is used in the same manner for a business in a large shopping center, but is constantly parked in a parking space near the street might be considered to be a portable sign. Any complaint regarding a vehicle or trailer being used as a portable sign requires extensive site inspections at various times of the day or week and even then, the results may not be definitive. Given the nature of this issue, it is believed that a more standardized approach would be beneficial.

Staff reviewed the portable sign regulations and definitions of 25 jurisdictions throughout the country, including the City of Fairfax, City of Alexandria, Arlington County and Montgomery County, Maryland. While this analysis shows that most jurisdictions prohibit portable signs, there are several different manners in which a portable sign is defined. It is noted that the definition of portable sign in several jurisdictions is very similar to Fairfax County's current definition. In order to gain a better understanding of the number and type of signs on vehicles, staff also visited numerous shopping centers and other nonresidential locations throughout the County. In addition, discussions were held with Zoning Enforcement staff regarding the number and type of complaints received regarding signs on vehicles.

Based upon these efforts, staff is recommending proposed changes to the Zoning Ordinance that will more clearly specify limitations which will provide more precise guidance to all concerned. Changes are recommended that would preclude any vehicle or trailer that displays a sign on which an arrow or other directional symbols or language is displayed that provides directions to a use on the lot where the vehicle is parked or on an adjacent lot. In addition, any vehicle or trailer that displays a sign and is parked 25 feet or less from any public street line and is located on the same lot or an adjacent lot as the establishment to which the sign identifies would be a prohibited portable sign.

As noted above, the location of a parked vehicle on a lot with a sign on it is an important factor in determining whether the vehicle is being used for advertising purposes. A vehicle parked near the public road right-of-way is more visually prominent than a vehicle parked a distance from the roadway and is therefore more likely to be used for advertising purposes. Several of the portable sign definitions from other jurisdictions include provisions stating that a portable sign is any vehicle with a sign on it that is parked within a certain distance from the roadway. It is believed that such an approach has merit because it is easy to understand and identify on a site. Staff considered proposing a distance equal to the minimum required front yard in the applicable zoning district, which in most commercial and industrial districts would result in a 40 foot setback. However, such a provision could preclude the parking of vehicles with signs on small sites where the principal building just meets the minimum required front yard and there is no other available parking in the side or rear yards. Given that not all vehicles

with signs are used primarily for advertising purposes, it is believed that this provision may be overly restrictive for small sites.

In order to be less restrictive on small sites, staff is recommending a setback of 25 feet from any public street line. This 25 foot distance would preclude, on most sites, the parking of vehicles with signs in the first row of parking spaces that abut the street, based on the dimensions of the parking space and travel aisle, or when there is the required 10 foot peripheral parking lot landscaping strip between the street and the parking spaces. In instances where there is a transitional screening requirement, there could be an even greater setback. The application of this recommended 25 foot dimension was tested on several shopping center, freestanding retail, industrial, office, service station and place of worship sites by reviewing the approved site plans for these locations. This analysis shows that the 25 foot setback from the public street line would preclude the parking of vehicles with signs on them in the first row of parking. The first row of parking is the most likely to be used for advertising purposes, because it is the most visually prominent from the road. It is much less likely that the second or third rows would be used for advertising purposes because they are often blocked from view from the public roadway by other parked vehicles. Therefore, staff believes that a 25 foot setback from any public street line is an appropriate distance. Street line is defined in the Zoning Ordinance, in pertinent part, as the dividing line between a street and a lot, same as the right-of-way line of a public street, and a public street is defined in the Ordinance as a platted street, dedicated for the use of the general public, graded and paved in order that every person has the right to pass and to use it all times, for all purposes of travel, transportation or parking to which it is adapted and devoted. Requiring the vehicle to be located a distance from the public street line will ensure that the setback is appropriately imposed along all road frontages. However, in recognition that there may be instances where this 25 foot setback creates a hardship, there would be the option for someone to seek variance approval of this setback distance from the BZA. In addition, an exception is also provided for the one commercial vehicle which is allowed under Sect. 10-102 of the Zoning Ordinance to be parked as an accessory use to a dwelling, which often, based on the length of the driveway, would not be able to meet the 25 foot requirement.

Although the primary emphasis of this amendment has been on addressing signs on vehicles, staff is also recommending a clarifying change to the portable sign definition. The definition currently provides that a portable sign includes any sign not permanently affixed to the ground nor to a building and it is believed that it would be beneficial to specifically state that this would include sandwich board signs, A-frame signs, gas or hot air-filled displays, balloons and banners. As such, these types of signs would also be prohibited portable signs under Sect. 12-104.

The Zoning Ordinance contains provisions to allow building-mounted and freestanding signs in the residential, commercial and industrial areas of the County. While it is recognized that the provision of signs serves an important public function for both the business or use being advertised as well as the customer, it is also believed that limitations on temporary portable signs are necessary to protect the character of areas within the County, to facilitate the creation of a convenient, attractive and harmonious community and to protect against danger in travel and transportation. The use of A-frame or sandwich board signs or vehicles/trailers parked along the roadways with banners or arrows contribute to sign clutter which can impede achieving the purposes of the Zoning Ordinance and in some instances result in

some uses having more signage than is allowed under the Zoning Ordinance. Although under the proposed amendment, there may still be instances where a vehicle with advertising on it may be parked in locations which arguably constitute a sign, it is believed that the proposed amendment will provide appropriate limitations for this issue and will remove the elements from the Ordinance that were subjective and, therefore, difficult to administer and enforce.

At the time of authorization of this amendment, the Board requested staff to develop an option that would allow for an administrative reduction in the proposed 25 foot setback requirement from the public street line. Concern was expressed that requiring someone to seek a variance from the BZA to park vehicles/trailers with signs within the setback area may be somewhat onerous, and it may be appropriate to allow the Zoning Administrator to approve a modification of this provision when there clearly is no other option available.

In response, the proposed amendment has been revised to contain two options pertaining to Sect. 12-104. Option 1 is the proposal as advertised and previously discussed. Option 2 allows the Zoning Administrator to approve a request to park vehicles/trailers within the 25 foot setback when the sign owner has adequately demonstrated that there are no on-site parking spaces that are greater than 25 feet from the public street line. Staff believes that it is appropriate to provide for such a modification and therefore, staff is recommending approval of the proposed amendment as set forth in Option 2, with an effective date of 12:01 AM on the day following adoption.

## PROPOSED ZONING ORDINANCE AMENDMENT

*This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of May 19, 2003 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.*

**Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by revising the definition of Sign, Portable to read as follows:**

- SIGN, PORTABLE: Any sign not permanently affixed to the ground nor to a building, ~~including any sign attached to or displayed on a vehicle that is used for the expressed purpose of advertising a business establishment, product, service, or entertainment, when that vehicle is so parked as to attract the attention of the motoring or pedestrian traffic~~ including, but not limited to, a sign that is moveable, such as a sandwich board sign, A-frame sign, gas or hot aired-filled displays, balloons or banners.

**Amend Article 12, Signs, Part 1, General Provisions, Sect. 12-104, Prohibited Signs, by adding a new last paragraph [Either Par. 14, if the currently pending amendment on Outdoor Lighting Standards is adopted prior to this amendment, or if not, Par. 15] to read as follows:**

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| <b>Option 1 Par. 14 or 15 of Sect. 12-104</b> |
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### **12-104 Prohibited Signs**

The following signs are prohibited in any zoning district and in any area of the County. Where applicable, these prohibitions shall apply to those signs permitted by the provisions of Sect. 103 above.

- 14 or 15. Any sign attached to, painted, or displayed on a vehicle/trailer that is an arrow, or other such directional symbols or language, for example, "Turn Left Here," that provides directions to a use on the lot in which the vehicle/trailer is parked or to an adjacent lot; or any sign attached to, painted, or displayed on a vehicle/trailer that is parked twenty-five (25) feet or less from any public street line and is located on the same lot, or an adjacent lot, as the establishment to which the sign identifies. The twenty-five (25) foot setback shall not apply to the parking of

1           the one commercial vehicle that may be allowed in an R district pursuant to Sect. 10-102 of  
2           this Ordinance.

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4   **OPTION 2 - Par. 14 or 15 of Sect. 12-104**

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6   **12-104 – Prohibited Signs**

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8   The following signs are prohibited in any zoning district and in any area of the County. Where applicable,  
9   these prohibitions shall apply to those signs permitted by the provisions of Sect. 103 above.

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11   14 or 15. Except as qualified below, any sign attached to, painted, or displayed on a vehicle/trailer that  
12   is an arrow, or other such directional symbols or language, for example, "Turn Left Here,"  
13   that provides directions to a use on the lot in which the vehicle/trailer is parked or to an  
14   adjacent lot; or any sign attached to, painted, or displayed on a vehicle/trailer that is parked  
15   twenty-five (25) feet or less from any public street line and is located on the same lot, or an  
16   adjacent lot, as the establishment to which the sign identifies. The Zoning Administrator may  
17   approve a request to allow the parking of vehicles/trailers with such signs within the twenty-  
18   five (25) foot setback when the sign owner has adequately demonstrated that there are no  
19   on-site parking spaces that are greater than twenty-five (25) feet from the public street line.  
20   The twenty-five (25) foot setback shall not apply to the parking of the one commercial  
21   vehicle that may be allowed in an R district pursuant to Sect. 10-102 of this Ordinance.

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24   **Amend Article 18, Administration, Amendments, Violations and Penalties, Part 4 ,Variances,**  
25   **Sect. 18-406, Unauthorized Variances, by revising Par. 6 to read as follows:**

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27       6. No variance shall be authorized that would relate to signs, except that a variance may be  
28       considered to the provisions of Par. 14 [or Par. 15] of Sect. 12-104.  
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